IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HONOURBALE SRI JUSTICE N.V. RAMANA

W.P. No. 10990 OF 2002

Dated : February 17, 2006

Between:

S.V. Ramana

Petitioner

AND

The Depot Manager,

Visakha Steel, City Depot 1,

APSRTC, Visakhapatnam and others

Respondents

THE HONOURBALE SRI JUSTICE N.V. RAMANA

W.P. No. 10990 OF 2002

ORAL ORDER:

The award dated 30.11.2001 passed by the Presiding Officer, Labour Court, Visakhapatnam, in I.D. No. 168 of 2000, dismissing the relief of reinstatement into service, is challenged in this writ petition.

The petitioner worked as a Conductor in the respondent Corporation from 10.9.1988 to 30.10.1999, on which day, a check took place on the bus bearing No.APZ-816 enroute Nanuparti to Police Barracks at stage No. 15 on Route No.44-A and the petitioner was found to have not issued tickets worth Rs.12/- after collecting the fare. The petitioner, to a charge memo submitted an explanation that the bus was full of luggage and due to excessive work, by oversight, he could not issue ticket. On receipt of the explanation, final order was passed by the respondent removing the petitioner from service on 30.10.1999, which was appealed against by the petitioner on 28.12.1999, was also dismissed by the Appellate Authority on 29.5.2000.

Aggrieved of the same, the petitioner raised an industrial dispute being ID No. 168 of 2000, which was also summarily dismissed vide the impugned order.

The main contention of the learned counsel for the petitioner is that the punishment of removal imposed against the petitioner is harsh, excessive and disproportionate to the proved misconduct inasmuch as the petitioner has served the Corporation for eleven long years without any blemish and the family members are totally dependant on him. He further contends that the Tribunal below ought to have conducted an enquiry inasmuch as the enquiry conducted by the respondents is without giving opportunity to the petitioner to prove his case.

On the other hand, it is contended by the learned Standing Counsel for the Corporation that full and fair opportunity was given to the petitioner to present his case as per APSRTC Service Regulations

and the Enquiry Officer submitted his report on 28.8.1999 holding that the charges leveled against the petitioner were proved and a show cause notice was issued to the petitioner on 16.10.1999 proposing to remove him from service, to which the petitioner submitted his explanation on 24.10.1999. On consideration of the same, final order dated 30.10.1999 came to be passed. In view of the fact that at every stage, the petitioner was asked to present his case and he participated in the proceedings, it is not true to contend that the petitioner was not given fair and full opportunity.

It is also further contended that the petitioner was involved in eleven cases of ticket and fare irregularities and punishment was imposed and, therefore, once the Corporation has lost faith in the employee, the punishment of removal for consistent ticket and fare irregularities imposed by the respondents is not disproportionate to proved charge.

Before delving on these contentions, be it noted that the scope and parameters of judicial review of this Court under article 226 of the Constitution of India in writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are based on suspicion, conjectures or surmises or no reason. It is a settled law that this Court does not act as an appellate authority so as to reappraise the evidence while exercising certiorari jurisdiction. It is within this scope, the impugned award of the Labour Court, is to be examined

The award shows that there was ample opportunity for the petitioner to issue ticket to the passenger inasmuch as the stage at which check was conducted was 15th stage from the boarding of the passenger but the petitioner did not issue ticket, which manifestly denotes the predominant idea of defrauding the Corporation causing wrongful loss to the Corporation and making unlawful gain for himself. Therefore, I have no hesitation in holding that the Tribunal below did

not err in holding that the petitioner is guilty of the charge.

The learned counsel for the petitioner contends that the punishment of removal from service is shockingly disproportionate to the proved charge. It is the contention of the learned Standing Counsel for the respondent that this is not the first offence, which the petitioner has committed. In his eleven years of service, the petitioner was inflicted with eleven punishments of ticket and fare irregularities and, therefore, in the absence of any reason whatsoever, how the punishment is disproportionate, it cannot be interfered with in writ jurisdiction.

There is no doubt that Section 11-A of the Industrial Disputes Act, 1947 confers wide discretion upon the Labour Court to reappraise the material available on record and substitute its own findings for that of the disciplinary authority, and where it feels that the punishment awarded by the disciplinary authority is too harsh and not in proportion to the proved charge or is shocking to the conscience of the Court, can award lesser punishment, but at the same time, it is a settled principle of law such wide discretion cannot be exercised arbitrarily but has to be exercised in a judicious manner in consonance with the Rules. The Apex Court in *V. Ramana v. A.P.S.R.T.C.()*, wherein it is held that the Labour Court while interfering with the punishment imposed by the disciplinary authority, should exercise its discretion under Section 11-A of the Industrial Disputes Act, 1947 judiciously, and should interfere if the order passed by the disciplinary authority is illogical or suffers from procedural irregularity or shocking to the conscience of the Court.

In the instant case, though the petitioner has collected Rs.24/- from the passenger, issued Rs.12/- ticket to the petitioner for luggage and appropriate for himself Rs.12/- towards fare and, thus, pocketed Rs.12/- for himself as wrongful gain causing wrongful loss to the Corporation. In view of this proved charge, nothing is demonstrated before this court as to how the punishment of removal from service imposed on the petitioner is disproportionate to the proved charge. In

a decision *The Divisional Manager, APSRTC v. E. Raja Reddy()*, a learned Judge of this Court observed that the Labour Court does not enjoy any untrammeled power or jurisdiction to set aside the order of discharge or dismissal and direct reinstatement of the workman and award lesser punishment in lieu of discharge or dismissal. An award setting aside the order of discharge or dismissal may be passed by the Tribunal only in case where it is satisfied that the order of discharge or dismissal was not justified and in that process the Labour Court is bound to record that the order of discharge or dismissal is shockingly disproportionate to the established misconduct. Such conclusion can be arrived at by the Labour Court only after appraisal of the material on record. The Apex Court in yet another decision *Regional Manager, U.P.S.R.T.C. v. Hoti Lal()*, held that a mere statement that punishment is disproportionate to the proved charge is not sufficient. In *Chairman & Managing Director, United Commercial Bank v. P.C. Kakkar()*, the Apex Court held when a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that punishment is shockingly disproportionate would not meet the requirement of law, but should be supported by reasons, so as to enable workman, as to why the decision has gone against him. From these decisions, it is clear that the Courts are duty bound to record their satisfaction if they seek to interfere with the punishment imposed by the disciplinary authority on the ground that it is disproportionate to the proved misconduct. As stated earlier, nothing is discernible from the evidence available on record, as to how the imposed punishment is disproportionate to the proved charges, muchless shockingly disproportionate.

For these reasons, the writ petition deserves to be dismissed and is accordingly dismissed, confirming the award under challenge. No order as to costs.

N.V.RAMANA, J.

February 17, 2006

MAS.